

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Ann B. Simeone,

*Appellant,*

v.

Case No. 09-LAY-09-0401

Ashtabula County Juvenile Court,

*Appellee.*

**ORDER**

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of subject matter jurisdiction, pursuant to O.R.C. §§ 124.03, 2151.13 and 124.11 (A)(32).



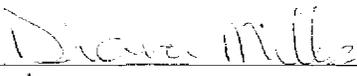
Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

  
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J. Richard Lumpe, *Chairman*

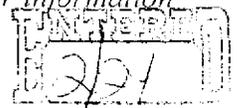
**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, Feb 24, 2010.

  
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Clerk

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.



**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Ann B. Simeone

Case No. 09-LAY-09-0401

*Appellant*

v.

January 27, 2010

Ashtabula County Juvenile Court

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on January 27, 2010 upon Appellee's Response to this Board's Questionnaire and Appellee's Motion to Dismiss, filed on November 5, 2009, and Appellee's Motion for Extension of Time, filed on January 25, 2010. To date, Appellant Simeone has not filed a memorandum *contra* to Appellee's Motion to Dismiss.

Appellee stated in its response to this Board's questionnaire that at the time of her layoff, Appellant Simeone was an unclassified employee pursuant to sections 2151.13 and 124.11(A)(32) of the Ohio Revised Code. Section 2151.13 of the Ohio Revised Code states as follows, in pertinent part:

**The juvenile judge may appoint** such bailiffs, **probation officers**, and other employees as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. The juvenile court may by entry on its journal authorize any deputy clerk to administer oaths when necessary in the discharge of his duties. **Such employees shall serve during the pleasure of the judge.** (Emphasis added).

In her notice of appeal, Appellant Simeone states she had been employed as a Juvenile Probation Officer for a little over seven years at the time of her layoff. Attached to Appellee's Motion to Dismiss is an affidavit from Kathleen M. Thompson, Assistant Court Administrator and supervisor of the probation

department. She also states Appellant Simeone held the position of Probation Officer. Therefore, the evidence has established that Appellant Simeone was a Juvenile Court Probation Officer at the time of her layoff and as such, pursuant to the above quoted statute, she served in that position at the pleasure of the judge.

Since Appellant Simeone was basically an at-will employee, serving at the pleasure of the judge, she was subject to termination or layoff at the judge's pleasure or discretion. Such an employee is deemed to be an unclassified employee with no civil service protection or rights and is an employee that this Board does not possess jurisdiction over. Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.03 of the Ohio Revised Code determines this Board's jurisdiction and specifically limits its jurisdiction to classified employees. The pertinent part of the statute states as follows:

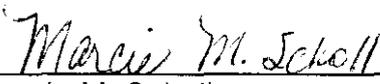
(A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) Hear appeals, as provided by law, **of employees in the classified state service** from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. (Emphasis added).

Therefore, since Appellant Simeone was an unclassified employee serving at the pleasure of the judge at the time of her layoff, this Board is without jurisdiction to hear this appeal. Therefore, it is my **RECOMMENDATION** that Appellee's Motion to Dismiss is **GRANTED** and this appeal be **DISMISSED** for a lack of subject matter jurisdiction pursuant to sections 124.03, 2151.13 and 124.11(A)(32) of the Ohio Revised Code. It is also noted that Appellee's Motion for Extension of Time to extend the date of the pre-hearing and record hearing in this case is deemed moot

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as with the dismissal of the appeal, no hearings in this matter will take place on the scheduled date of February 18, 2010.

  
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Marcie M. Scholl  
*Administrative Law Judge*

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